Datin Azizah bte Abdul Ghani v Dewan Bandaraya Kuala Lumpur & Ors and another appeal

SUPREME COURT (KUALA LUMPUR) — CIVIL APPEAL NOS 02–169–1992 AND 02–170–1992
ABDUL HAMID OMAR LP, GUNN CHIT TUAN AND EUSOFF CHIN SCJJ
7 AUGUST 1992

Public Authorities *— Town planning — Planning permission given by Datuk Bandar — Failure to inform registered proprietors of adjoining land — Development order quashed — Planning (Development) Rules 1973 rr 5, 6 & 11 — Emergency (Essential Powers) Ordinance No 46 of 1970 — City of Kuala Lumpur (Planning) Act 1973 — Federal Territory (Planning) Act 1982*

In this case the Datuk Bandar, Kuala Lumpur, had made a development order granting planning permission on Lot 4951, allowing an increase of density from 10 persons to 44 persons an acre to enable the building of two blocks of apartments, one of two storeys and the other three storeys. On the facts no notice as required under the Planning (Development) Rules 1970 were given to the appellants. The appellants had applied for a writ of certiorari to quash the development order but the applications were dismissed in the High Court. The appellants appealed.

The two appeals virtually raised the same issues, namely:

(i) whether rr 5, 6 and 11 of the Planning (Development) Rules 1970 (hereinafter 'the 1970 Rules') are saved by the Federal Territory (Planning) Act 1982 (hereinafter 'the 1982 Act');
(ii) if so, whether they are inconsistent with the 1982 Act;
(iii) if they are not saved by the 1982 Act, whether the adjoining owners have a right to be notified by the Datuk Bandar of Kuala Lumpur to put in their objections before the Datuk Bandar makes a development order under s 22 of the 1982 Act.

When the Emergency (Essential Powers) Ordinance No 46 of 1970 was repealed, the provisions of s 16(3) of that Ordinance were re-enacted as s 17(3) of the 1973 Act. These sections required the Datuk Bandar to give the right to the adjoining landowners to put in their objections whenever he received an application by a landowner to develop his land. The 1982 Act when repealing the 1973 Act did not re-enact the provisions of s 17(3). Instead, it made provisions under s 22(4) requiring the Datuk Bandar, when dealing with an application for planning permission, 'to take into consideration such matters as are in his discretion expedient or necessary for purposes of proper planning ...' and the Datuk Bandar 'shall have regard to any other material consideration'.

Thus while under the repealed 1970 Ordinance and the repealed 1973 Act the Datuk Bandar was required to notify the adjoining landowners and hear their objections, the 1982 Act is silent on this issue. But the 1982 Act requires him, even though at his discretion, to consider matters which are expedient or necessary and material for the purpose of proper planning. How the Datuk Bandar is to perform his statutory duty when he receives an application for planning permission, if no provision is made in the 1982 Act, is to be provided for by the rules to be made under s 64 of the 1982 Act. No rules under the said s 64 have so far been made since the relevant provisions, ie s 22 came into force on 15 April 1984. The question is whether the 1970 Rules are still operative or whether they are in conflict or inconsistent with the 1982 Act.

Held, allowing the appeals:

(1) The existing rr 5 and 6 of the 1970 Rules are not in conflict or inconsistent with the provisions of s 22(4) of the 1982 Act. They merely spell out one of the material and necessary matters which the Datuk Bandar is required to consider and they lay down the procedures how the Datuk Bandar is to execute his statutory duties in considering such matters before coming to a decision to make or refuse to make a development order.

(2) Rule 11 of the 1970 Rules is however inconsistent with the provision of s 23(1) of the 1982 Act. This is because while s 23(1) of the 1982 Act gives only the applicant for planning permission the right to appeal, r 1 of the 1970 Rules allows even the adjoining landowners who had put their objections to appeal against any development order made by the Datuk Bandar.

(3) On the facts, the Datuk Bandar had failed to comply with the requirements of rr 5 and 6 of the 1970 Rules, when making the development order. Certiorari will therefore be issued to quash the development order.

[Bahasa Malaysia summary

Di dalam kes ini Datuk Bandar Kuala Lumpur telah membuat perintah pembangunan memberi kebenaran perancangan di atas Lot 4951, membenarkan tambahan kepadatan dari 10 orang ke 44 orang seacre untuk membolehkan pembangunan dua blok apartment, satu setinggi dua tingkat dan yang lagi satu setinggi tiga tingkat. Mengikut kenyataan di dalam kes tidak ada notis diberi kepada perayu-perayu seperti yang dikehendaki oleh Kaedah-Kaedah Perancangan (Bangunan) 1970. Perayu-perayu telah memohon writ certiorari untuk membatalkan perintah pembangunan itu akan tetapi permohonan itu ditolak di Mahkamah Tinggi. Perayu-perayu telah membuat rayuan. Kedua-dua rayuan itu menimbulkan isu-isu yang agak sama iaitu:

(i) sama ada kk 5, 6 dan 11 Kaedah-Kaedah Perancangan (Pembangunan) 1970 (selepas ini disebut sebagai 'Kaedah-kaedah

1970') diselamatkan oleh Akta Wilayah Persekutuan (Perancangan) 1982 (selepas ini disebut sebagai 'Akta 1982');

(ii) jika diselamatkan sama ada Kaedah-kaedah 1970 itu berlawanan dengan Akta 1982;

(iii) jika tidak diselamatkan oleh Akta 1982, sama ada tuan punya tanah bersebelahan mempunyai hak diberitahu oleh Datuk Bandar Kuala Lumpur bahawa mereka boleh memasukkan bantahan mereka sebelum Datuk Bandar membuat perintah pembangunan di bawah s 22 Akta 1982 itu.

Apabila Ordinan Darurat (Kuasa-Kuasa Perlu) No 46 Tahun 1970, dimansuhkan, peruntukan-peruntukan s 16(3) Ordinan itu telah diperundangkan semula sebagai s 17(3) Akta Bandar Kuala Lumpur (Pembangunan) (selepas ini disebut sebagai 'Akta 1973'). Seksyen-seksyen itu memerlukan Datuk Bandar memberi hak kepada tuan punya tanah bersebelahan membuat bantahan kepada Datuk Bandar apabila beliau mendapat permohonan dari tuan punya tanah untuk membangunkan tanah itu. Akta 1982 apabila ia memansuhkan Akta 1973 tidak mengundangkan semula peruntukan-peruntukan s 17(3) itu. Sebaliknya ia membuat peruntukan di bawah s 22(4) memerlukan Datuk Bandar apabila beliau menguruskan permohonan untuk kebenaran perancangan 'mengambil kira mana-mana perkara yang pada budi bicaranya adalah patut atau perlu untuk maksud perancangan yang wajar' dan Datuk Bandar 'hendaklah memberi perhatian kepada pertimbangan yang lain yang mustahak'.

Nampaknya sungguhpun di bawah Ordinan 1970 yang telah dimansuhkan dan Akta 1973 yang juga telah dimansuhkan, Datuk Bandar telah dikehendaki memberitahu kepada tuan punya tanah bersebelahan dan mendengar bantahan-bantahan mereka, Akta 1982 tidak sebut apa-apa tentang isu itu. Akan tetapi Akta 1982 memerlukan beliau, sungguhpun atas budi bicaranya, menimbang perkara-perkara yang patut atau perlu bagi maksud perancangan yang wajar. Bagaimanakah Datuk Bandar menjalankan kewajipan statutorinya apabila beliau menerima permohonan untuk kebenaran perancangan, jika tidak terdapat peruntukan di dalam Akta 1982 itu, akan diperuntukan oleh kaedah-kaedah yang dibuat di bawah s 64 Akta 1982 itu. Belum ada kaedah-kaedah dibuat di bawah s 64 semenjak s 64 itu dikuatkuasakan pada 15 April 1984. Soalnya sama ada Kaedah-kaedah 1970 itu masih berkuatkuasa atau kaedah-kaedah itu bercanggah atau berlawanan dengan Akta 1982 itu.

Diputuskan, membenarkan rayuan:

(1) Kaedah 5 dan k 6 Kaedah-kaedah 1970 tidak bercanggah atau berlawanan dengan peruntukan s 22(4) Akta 1982 itu. Kaedah-kaedah itu hanya menerangkan satu daripada perkara-perkara yang matan dan perlu yang mana Datuk Bandar harus menimbangkan dan kaedah-kaedah itu menyebutkan cara-cara bagaimana Datuk Bandar menjalankan tugas-tugas statutori beliau dalam

menimbangkan perkara-perkara itu sebelum membuat keputusan membuat atau enggan membuat sesuatu perintah pembangunan.

(2) Kaedah 11 Kaedah-kaedah 1970 itu sebaliknya bercanggah dengan peruntukan s 23(1) Akta 1982 itu. Ini oleh kerana s 23(1) Akta 1982 memberi hak kepada pemohon kebenaran perancangan itu sahaja untuk membuat rayuan, manakala k 11 Kaedah-kaedah 1970 itu membenarkan tuan punya tanah bersebelahan yang telah membuat bantahan merayu terhadap perintah pembangunan yang dibuat oleh Datuk Bandar.

(3) Di atas fakta-fakta kes ini, Datuk Bandar telah tidak mematuhi kepada k 5 dan k 6 Kaedah-kaedah 1970 itu, apabila membuat perintah pembangunan itu, dan oleh kerana itu perintah certiorari hendaklah dikeluarkan untuk membatalkan perintah pembangunan itu.]

Cases referred to

1 *Associated Provincial Picture Houses Ltd v Wednesbury Corp* [1948] 1 KB 223 (folld)

2 *Padfield & Ors v Minister of Agriculture, Fisheries & Food & Ors* [1968] 1 All ER 694 (folld)

Legislation referred to

City of Kuala Lumpur (Planning) Act 1973
Emergency (Essential Powers) Ordinance No 46 of 1970
Federal Territory (Planning) Act 1982
Planning (Development) Rules 1970 rr 5, 6, 11

Appeal from: Originating Motion Nos R1–25–28 and R1–25–149–91 (High Court, Kuala Lumpur)

Cecil Abraham (*RS Nathan* with him) (*Shearn Delamore & Co*) for the appellant in Civil Appeal No 02–169–1992.

Cecil Abraham (*RS Nathan* and *Manjit Singh Saini* with him) (*Adlan & Hj Suhaimi*) for the appellant in Civil Appeal No 02–170–1992.

Datuk Zaki Tun Azmi (*Rashid & Lee*) for the first and second respondents in Civil Appeal No 02–169–1992.

Balwant Singh Sidhu (*Balwant Singh Sidhu & Co*) for the third and fourth respondents in Civil Appeal No 02–169–1992.

CV Das (*N Balan* with him) (*Shook Lin & Bok*) for the respondents in Civil Appeal No 02–170–1992.

RR Sethu (*RR Sethu*) for the developer in Civil Appeal No 02–170–1992.

Abdul Hamid Omar LP (delivering the grounds of judgment of the court): These two appeals were heard together because they raise virtually the same issues, namely:

(i) whether rr 5, 6 and 11 of the Planning (Development) Rules 1970 (hereinafter 'the 1970 Rules') are saved by the Federal Territory (Planning) Act 1982 (hereinafter 'the 1982 Act');

(ii) if so, whether they are inconsistent with the 1982 Act;
(iii) if they are not saved by the 1982 Act, whether the adjoining owners have a right to be notified by the Datuk Bandar of Kuala Lumpur to put in their objections before the Datuk Bandar makes a development order under s 22 of the 1982 Act.

The 1970 Rules were made by the Federal Capital Planning Authority with the approval of the Minister, in the exercise of the powers conferred under s 47 of the Emergency (Essential Powers) Ordinance No 46 of 1970.

The City of Kuala Lumpur (Planning) Act 1973 (hereinafter 'the 1973 Act') repealed the Emergency (Essential Powers) Ordinance No 46 of 1970, but by s 48 of the 1973 Act, any rule made under the Emergency (Essential Powers) Ordinance No 46 of 1970, continued in force unless it was inconsistent with the provisions of the 1973 Act.

The 1973 Act was subsequently repealed by s 65(1) of the 1982 Act. Section 65(2)(a) of the 1982 Act states:

> 65(2) Notwithstanding the repeal of the law specified in subsection (1), which in this Act is referred to as the 'repealed law' —
>
> (a) any rule made under the repealed law shall in so far as it is not inconsistent with the provisions of this Act continue in force and have the like effect as if it had been made under this Act;

Section 16(3) of the Emergency (Essential Powers) Act No 46 of 1970 stated:

> Upon receipt of the application for planning permission the Authority shall inform the registered proprietors of the lands adjoining the land to which the application relates of their right to object to the application and to state their grounds of objection within fourteen days of the date of the notice.

Section 17(3) of the 1973 Act stated:

> Upon receipt of the application for planning permission the Commissioner shall by notice in writing served on the owners of the lands adjoining the land to which the application relates inform them of their rights to object to the application and to state their grounds of objection within fourteen days of the date of service of the notice:
>
> Provided that the Commissioner shall not be required to comply with the provisions of this subsection —
>
> (a) where in respect of an application for planning permission a layout plan is required by virtue of section 7 and such layout plan is published for public objection pursuant to subsection (4) of that section; or
> (b) where an application for planning permission is in conformity with the development plan.

The 1982 Act contains no such provisions as were found in s 16(3) or s 17(3) quoted above. Instead, s 22(4) of the 1982 Act states:

> The Commissioner in dealing with an application for planning permission shall *take into consideration such matters as are* in his discretion *expedient or necessary for purposes of proper planning* and in this connection but without prejudice to the discretion of the Commissioner to deal with such application, the Commissioner shall as far as practicable have regard to —

(a) the provisions of the development plan and where the local plan has not been adopted, the Comprehensive Development Plan; and
(b) any other material consideration: (Emphasis added.)

It is noted that no rules were made under both the 1973 Act and the 1982 Act. Therefore, by s 48 of the 1973 Act, and s 65 of the 1982 Act, the rules made under the Emergency (Essential Powers) Ordinance No 46 of 1970 should still continue to be in force. In order to determine the issue it is necessary to refer to r 5 and r 6 of the 1970 Rules, and they are:

5(1) Upon receipt of any application for planning permission, the Authority shall send to the applicant an acknowledgement thereof.
(2) Upon receipt of any application for planning permission, the Authority *shall inform the registered proprietors of the lands adjoining the land to which the application relates* in Form 4 of the First Schedule of their right to object to the application.
(3) Any registered proprietor of any land adjoining the land to which the application relates may object to the application within fourteen days of the date of the notification by the Authority.
(4) The Authority shall within fourteen days after the time specified to file objections hear the applicant, and those persons who have filed their objections.
6(1) The Authority shall if there are no objections to the application and if the application is in conformity with the comprehensive development plan, make a development order immediately after a lapse of fourteen days of the date of notice in Form 5 of the First Schedule.
(2) The Authority shall if there are objections to the application within two weeks after the hearing under Rule 5(4) convey the decision to the applicant and those persons who had filed their objections.
(3) The development order in paragraph (1) and the decision in paragraph (2) shall be made in Form 5 of the First Schedule.

Datuk Zaki for the Datuk Bandar submitted that rr 5 and 6 of the 1970 Rules are inconsistent with the 1982 Act because s 22 of the 1982 Act makes no provision or is silent on the need to inform the adjoining owners as were found under s 16(3) of the Emergency (Essential Powers) Ordinance No 46 of 1970, or s 17(3) of the 1973 Act. Encik Cecil Abraham for the applicant in Appeal No 02–169–1992 argued that the 1982 Act did not expressly prohibit the Datuk Bandar from inviting the views of the adjoining landowners when making a development order. He said that the Datuk Bandar is required under s 22(4) of the 1982 Act to take into account 'any other material consideration', and the adjoining landowners' views and objections are 'material consideration'. He, therefore, submitted that rr 5 and 6 are not inconsistent with the provisions of s 22 of the 1982 Act. He, however, conceded that r 11 is inconsistent with the provision of s 23(1) of the 1982 Act.

In our view it is a settled policy of the legislature that an Act of Parliament lays down the general principles of the law and to delegate to subordinate authorities the power of making rules for the purpose of settling administrative details and of providing the necessary procedures for giving effect to the general principles of the Act. When, therefore, an Act of Parliament enables an authority to make regulations, a regulation which is

validly made under the Act, must be regarded as though it were itself an enactment. But any rule made under an Act of Parliament cannot be intended to override the specific provisions of the Act itself. Under ss 23 and 87 of the Interpretation Acts 1948 and 1967 (Act 388), any rule which is inconsistent with an Act of Parliament is void to the extent of the inconsistency.

When the Emergency (Essential Powers) Ordinance No 46 of 1970 was repealed the provisions of s 16(3) of that Ordinance were re-enacted as s 17(3) of the 1973 Act. These sections required the Datuk Bandar to give the right to the adjoining landowners to put in their objections whenever he received an application by a landowner to develop his land. The 1982 Act when repealing the 1973 Act did not re-enact the provision of s 17(3). Instead, it makes provision under s 22(4) requiring the Datuk Bandar, when dealing with an application for planning permission, 'to take into consideration such matters as are in his discretion expedient or necessary for purposes of proper planning ...' and the Datuk Bandar 'shall have regard to any other material consideration'.

It will be seen that while under the repealed 1970 Ordinance and the repealed 1973 Act the Datuk Bandar was required to notify the adjoining landowners and hear their objections, the 1982 Act is silent on this issue. But the 1982 Act requires him, even though at his discretion, to consider matters which are expedient or necessary and material for the purpose of proper planning. How the Datuk Bandar is to perform his statutory duty when he receives an application for planning permission, if no provision is made in the 1982 Act, is to be provided for by the rules to be made under s 64 of the 1982 Act. No rule under the said s 64 has so far been made since the relevant provision, ie s 22 came into force on 15 April 1984. Section 64(1) of the 1982 Act states:

> The Commissioner may with the approval of the Minister make rules generally for the *better* carrying out of the provisions of the Act.

We emphasize the word 'better' in s 64 because this word is seldom used under the rule-making power in most Acts of Parliament. It denotes improvements. We have already said that rules are generally made to lay down procedures, administrative or otherwise in carrying out the provisions of an Act. In the context of s 64(1) of the 1982 Act, the word 'better' requires the rule-making authorities to find and determine the best means and ways for the proper carrying out of the provisions of the Act.

We find that the existing rr 5 and 6 of the 1970 Rules are not in conflict or inconsistent with the provision of s 22(4) of the 1982 Act. They merely spell out one of the material and necessary matters which the Datuk Bandar is required to consider, and they lay down the procedures how the Datuk Bandar is to execute his statutory duties in considering such matters before coming to a decision to make or refuse to make a development order.

On the first two issues raised before us we find that s 65(2) of the 1982 Act saves rr 5 and 6 of the 1970 Rules because those rules are not inconsistent with the provision of s 22(4) of the 1982 Act. Rule 11 of the 1970 Rules, however, requires further consideration. Rule 11 states:

(1) Any applicant or any owner of the lands adjoining the land to which the application for development relates, and who has lodged an objection under paragraph (3) of Rule 5, aggrieved by the Development Order may appeal to the Appeal Board within three months of the receipt by him of Form 5 of the First Schedule.

(2) The appeal under paragraph (1) shall be made in Form 12 of the First Schedule and shall be accompanied by a fee of $250.

But s 23(1) of the 1982 Act states:

> An appeal against the decision of the Commissioner made under subsection (1) or (2) of section 22 may be made to the Appeal Board within one month from the date of communication of such decision to him, *by any applicant* aggrieved by the decision of the Commissioner in refusing his application for planning permission or who is aggrieved by any condition imposed by the Commissioner in granting the planning permission in respect of his application.

We find that r 11 of the 1970 Rules is inconsistent with the provision of s 23(1) of the 1982 Act. This is because while s 23(1) of the 1982 Act gives only the applicant for planning permission the right to appeal, r 11 of the 1970 Rules allows even the adjoining landowners who had put in their objections to appeal against any development order made by the Datuk Bandar. This part of r 11, therefore, militates against the provision of s 23(1) of the 1982 Act. We therefore find that r 11 of the 1970 Rules is valid only to the extent that it makes provision for an applicant to file his appeal in Form 12 of the First Schedule within three months after the receipt by him of Form 5.

Under the circumstances the third issue does not arise.

It is now necessary to examine the facts in Civil Appeal No 02–169–1992 as found by the learned judge of the High Court to determine whether the Datuk Bandar had complied with the requirements of the law when he made the development order dated 10 January 1991 granting planning permission on Lot 4951 allowing an increase in density from 10 persons to 44 persons per acre to enable the building of two blocks of apartment, one of two storeys and the other of three storeys high.

The appellant in this appeal is the owner of land Lot 4948 which adjoins Lot 4951 Persiaran Bukit Tunku, Mukim Batu, Kuala Lumpur. The appellant in her affidavit said that she had received an AR registered letter dated 15 September 1986 from the Planning Department of the Dewan Bandaraya Kuala Lumpur ('DBKL') informing her that an application for developing Lot 4951 had been received by the DBKL for the construction of a five-storey apartment, and she was asked if she had any objection to make under r 5(2) of the 1970 Rules.

On 18 September 1986 she sent her objection giving reasons for her objection. On 5 February 1987 she received another letter from the DBKL to say that the Datuk Bandar had rejected the application for the planning permission.

The appellant said that in early 1991 she saw some demolition work being done on Lot 4951. Upon her inquiries made at DBKL she found that the Datuk Bandar had made a development order in respect of Lot 4951 on

10 January 1991. She also found out from an officer in the Planning Department that a letter dated 25 October 1990 had been sent to her to inquire if she had any objection on the construction of two apartments of two and three storeys respectively on the same Lot 4951. While the first letter dated 15 September 1986 was addressed to her at her residence at No 8 Simpang Tunku, Kenny Hill, Kuala Lumpur, the second letter dated 25 October 1990 was addressed to her at No 15 Lorong 17/21F Petaling Jaya which was a house she had let out to a tenant. Both letters bore the same DBKL file reference number. The letter dated 25 October 1990 never reached the appellant. She, therefore, could not file any objection to the Datuk Bandar.

Datuk Zaki, learned counsel for Datuk Bandar, said the error in the address of the appellant in the second letter dated 25 October 1990 was because two different officers had handled the file. In any event, he submitted that under s 53(1)(c)(ii) of the 1982 Act, any document required to be served on any person under the Act or rules made under the Act, is deemed to have been duly served on the person if it is sent to the person by registered post. With respect we do not agree that the presumption would apply in this case. For the presumption to apply the letter must first be correctly addressed to the applicant. The mistake in the address is due to the negligence of the officer who signed the letter dated 25 October 1990. This mistake had deprived the appellant of the opportunity of putting in her objection. It follows that when making the development order dated 10 January 1991, the Datuk Bandar had failed to comply with the requirement of rr 5 and 6 of the 1970 Rules.

In Civil Appeal No 02–170–1992, Datuk Hj Suhaimi bin Dato Hj Kamaruddin is the owner of land Lot 37719 Mukim of Wilayah Persekutuan, which adjoins Lots 6271 and 6272 belonging to Lindisfarne Heights Sdn Bhd. On 8 August 1990, the Datuk Bandar Kuala Lumpur, on the application of Lindisfarne Heights Sdn Bhd, made a development order and approved the population density of Lots 6271 and 6272 from 10 persons per acre to 82 persons per acre, and also approved the building of a three-storey five-level condominium on those lots. Two adjoining landowners, Lot 6273 and Lot 6270 were given notices by the DBKL to make their objections but they did not make any objection. However, no notice was given by DBKL to Datuk Hj Suhaimi as admitted by Mahadi bin Ngah, an officer in the Planning Department of DBKL, in his affidavit affirmed on 21 March 1992. We therefore find that in this appeal too, the Datuk Bandar had failed to comply with the requirements of the provision of rr 5 and 6 of the 1970 Rules.

In *Associated Provincial Picture Houses Ltd v Wednesbury Corp*[1] at p 228, Lord Greene MR said:

> What then is the power of the courts? They can only interfere with an act of executive authority if it can be shown that the authority has contravened the law ... As I have said, it must always be remembered that the court is not a court of appeal. When discretion of this kind is granted the law recognizes certain principles upon which that discretion must be exercised, but within the four corners of those principles the discretion, in my opinion, is an absolute one and

cannot be questioned in any court of law. What then are those principles? They are well understood. They are principles which the court looks to in considering any question of discretion of this kind.

The exercise of such a discretion must be a real exercise of the discretion. If, in the statute conferring the discretion, there is to be found expressly or by implication *matters which the authority exercising the discretion ought to have regard to*, then in exercising the discretion it must have regard to those matters. Conversely, if the nature of the subject-matter and the general interpretation of the Act make it clear that certain matters would not be germane to the matter in question, the authority must disregard those irrelevant collateral matters. (Emphasis added.)

In *Padfield & Ors v Minister of Agriculture, Fisheries & Food & Ors*[2] at p 717, Lord Upjohn said:

My Lords, on the basic principles of law to be applied there was no real difference of opinion, the great question being how they should be applied in this case. The Minister in exercising his powers and duties conferred on him by statute can only be controlled by a prerogative order which will only issue if he acts unlawfully.

We would therefore allow both the appeals with costs here and in the High Court.

In respect of both the appeals we also make the following orders:

(1) that certiorari be issued to quash the development order dated 10 January 1991 in respect of Lot 4951 Mukim Batu, Kuala Lumpur and development order dated 8 August 1990 in respect of Lots 6271 and 6272 Mukim of Wilayah Persekutuan made by the Datuk Bandar;
(2) that the Datuk Bandar shall reconsider the applications for planning permissions in respect of Lot 4951 Mukim of Batu Kuala Lumpur and in respect of Lots 6271 and 6272 Mukim of Wilayah Persekutuan, in accordance with law; and
(3) the deposits in respect of these appeals be returned to the appellants.

Order accordingly.

Reported by Prof Ahmad Ibrahim